

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EFRAIN PEDRO GUTIERREZ-VIDAL,

Defendant.

No. 16-CR-3041-LRR

**ORDER REGARDING
MAGISTRATE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On November 2, 2016, a two-count Indictment was filed against Defendant Efrain Pedro Gutierrez-Vidal. On November 28, 2016, Defendant appeared before United States Chief Magistrate Judge Jon S. Scoles and entered pleas of guilty to Counts 1 and 2 of the Indictment. On November 28, 2016, Judge Scoles filed a Report and Recommendation in which he recommended that Defendant's guilty pleas be accepted. No objections to Judge Scoles's Report and Recommendation were filed. The court, therefore, undertakes the necessary review of Judge Scoles's recommendation to accept Defendant's pleas in this case.

II. ANALYSIS

Pursuant to statute, this court's standard of review for a magistrate judge's report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Criminal Procedure 59(b) provides for review of a magistrate judge's report and recommendation on dispositive motions, where objections are made, as follows:

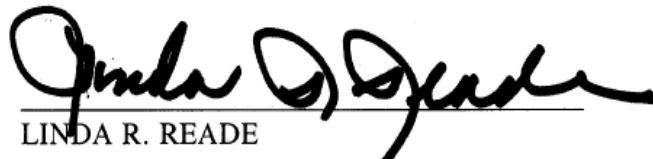
The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

Fed. R. Crim. P. 59(b)(3).¹

In this case, no objections have been filed, and it appears to the court upon review of Judge Scoles's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Scoles's Report and Recommendation of November 28, 2016, and **ACCEPTS** Defendant's pleas of guilty in this case to Counts 1 and 2 of the Indictment.

IT IS SO ORDERED.

DATED this 16th day of December, 2016.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

¹ *United States v. Cortez-Hernandez*, No. 15-2314, 2016 WL 7174114, at *3 (8th Cir. Dec. 9, 2016) (per curiam), suggests that a defendant may have the right to de novo review of a magistrate judge's recommendation to accept a plea of guilty even if no objection is filed. *But see* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b). The district court judge will undertake a de novo review of the Report and Recommendation if a written request for such review is filed within fourteen days after this order is filed.